

JANETH CAYANAN  
TEODORICO CAYANAN  
1388 Trestlewood Drive  
San Jose, CA 95138

Defendants, in Pro Per

**E-filing**

**FILED**

2011 JAN 13 A 11:00

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
N.D. CALIF. SAN JOSE

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

U.S. BANK, NATIONAL ASSOCIATION,  
as Trustee

Plaintiff,

vs.

TEODORICO CAYANAN, JANETH  
CAYANAN; and DOES 1 to 100, inclusive  
Defendants.

**CV 11-00196**

Case No:

(SANTA CLARA COUNTY SUPERIOR  
COURT CASE No. 1-10-CV-185244)

**HRL**

**DEFENDANTS' NOTICE OF REMOVAL  
TO FEDERAL COURT**

TO: THE CLERK OF THE UNITED STATES DISTRICT COURT IN AND FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

PLEASE TAKE NOTICE THAT Defendants in the above-titled matter hereby remove to  
this Court the state court action described below.

Defendants Teodorico Cayanan and Janeth Cayanan ("Defendant"), hereby give notice  
that this action is removed to the United States District Court for the Northern District of  
California from the Superior Court of California, in and for Santa Clara County.

Pursuant to 28 U.S.C. § 1441, Defendant further states as follows:

1       **State Court Action:** Teodorico Cayanan and Janeth Cayanan are named as the  
2 defendants  
3 in a civil action filed in the Superior Court of California, in and for Santa Clara County, styled  
4 *US National Bank v. Teodorico Cayanan and Janeth Cayanan* , Case number 1-10-CV-185244  
5 (“the state court action”)

6       **Commencement of State Court Action:** The state court action was commenced  
7 when plaintiff filed a Summons and Complaint for Unlawful Detainer (“Complaint”) on or  
8 about October 19, 2010. Service of the Summons and Complaint has not been effected on  
9 Defendants. This Notice of Removal is timely, in that it is being filed within thirty (30) days of  
10 receipt of service of Complaint by Defendants. Defendants have not filed pleadings in this case  
11 in the state court action, other than a Demurrer to Complaint.

12       **Record in State Court:** The following pleadings, as are available in the file of the state  
13 court action, encompass all of the pleadings received or filed by Defendant in this action up to  
14 the present time.  
15

16       Summons

17       Complaint

18       Request for Order for Service by Posting

19       Declaration of Due Diligence

20       Demurrer to Complaint

21       Opposition to Demurrer to Complaint  
22

23       The Complaint is attached hereto as **Exhibit A**. A complete copy of all additionally document  
24 filed in the state court proceeding will be submitted with a subsequent declaration.  
25

1                   **Diversity of Citizenship is Basis for Federal Court Jurisdiction:** This dispute between  
2 Plaintiffs and Defendant is a controversy between citizens of different states.

3                   a.       Plaintiff, U.S. Bank, is a Delaware corporation with its principle place of  
4 business in Wilmington, Delaware.

5                   b.       Defendants Teodorico Cayan and Janeth Cayan is, and at all times  
6 relevant have been, residence of the State of California

7  
8                   **Nature and Description of Case:** This action seeks possession, damages and attorneys'  
9 fees and costs, among other relief, for alleged unlawful detainer of subject property 1388  
10 Trestlewood Drive, San Jose, CA 95138

11                   **Amount in Controversy:** Plaintiffs seek to recover an amount in excess of \$75,000.  
12 The Complaint states that Plaintiffs seek, inter alia, judgment against Defendant for fees, costs  
13 and expenses Plaintiffs incurred in the prosecution of this lawsuit, possession of the subject  
14 property, and "such further relief as the court deems equitable and just.". Taking all of these  
15 factors into consideration, Defendant reasonably believes that the Plaintiff seeks damages and/or  
16 other recoveries counting towards the jurisdictional minimum, in excess of \$75,000.

17  
18                   **Applicable Statutes:** This is a civil action over which this Court has original jurisdiction  
19 pursuant to 28 U.S.C. § 1332, and the action is removable to this Court pursuant  
20 to 28 U.S.C. § 1441(a) and 28 U.S.C. § 1446.

21                   **Concurrent Notice to State Court:** Defendants are concurrently filing a copy of this  
22 Notice of Removal with the Court of the Clerk of the Superior Court of California in and for  
23 Santa Clara County, cause number 1-10-CV-185244, pursuant to 28 U.S.C. § 1446(d).

24 Dated: \_\_\_\_\_  
25

1 BY: Teodorico Cayanan  
2 TEODORICO CAYANAN, pro per  
3 Defendant

4 BY: <sup>b</sup>Janeth Cayanan  
5 JANETH CAYANAN, pro er  
6 Defendant  
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# EXHIBIT A

SUM-130

# SUMMONS (CITACION JUDICIAL)

## UNLAWFUL DETAINER—EVICTIION

(RETENCIÓN ILÍCITA DE UN INMUEBLE—DESALOJO)

### NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO): TEODORICO CAYANAN, JANETH CAYANAN, and DOES 1 through 100, inclusive

### YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE): U.S. BANK, NATIONAL ASSOCIATION, as Trustee

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

2010 OCT 19 A 9:57

You have 5 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. (To calculate the five days, count Saturday and Sunday, but do not count other court holidays. If the last day falls on a Saturday, Sunday, or a court holiday then you have the next court day to file a written response.) A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

Tiene 5 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. (Para calcular los cinco días, cuente los sábados y los domingos pero no los otros días feriados de la corte. Si el último día cae en sábado o domingo, o en un día en que la corte esté cerrada, tiene hasta el próximo día de corte para presentar una respuesta por escrito.) Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto el desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presente su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desahcer el caso.

CASE NUMBER  
(Número del caso)

110CV185244

1. The name and address of the court is:

(El nombre y dirección de la corte es):

Santa Clara County Superior Court-Downtown  
191 No. First Street, San Jose, CA 95113

2. The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

JOHN C. SAGINAW (Bar No. 67385)

Telephone No. (949) 854-2244

AMY E. STARRETT (SBN 256204)

Robert J. Jackson & Associates, Inc., 4199 Campus Drive, Suite 700, Irvine, CA 92612

3. (Must be answered in all cases) An unlawful detainer assistant (Bus. & Prof. Code, §§ 6400-6415) ☒ did not ☐ did for compensation give advice or assistance with this form. (If plaintiff has received any help or advice for pay from an unlawful detainer assistant, complete item 6 on the next page.)

Date:

(Fecha)

OCT 19 2010

Chief Executive Officer, Clerk

Clerk, by  
(Secretario)

Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

4. NOTICE TO THE PERSON SERVED: You are served

a. ☐ as an individual defendant.

b. ☐ as the person sued under the fictitious name of (specify):

c. ☐ as an occupant

d. ☒ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☒ CCP 415.46 (occupant)

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

☐ other (specify):

5. ☐ by personal delivery on (date):

Form Adopted for Mandatory Use  
Judicial Council of California  
SUM-130 (Rev. July 1, 2009)

SUMMONS—UNLAWFUL DETAINER—EVICTIION

Code of Civil Procedure, §§ 412.20, 415.458, 1167  
[www.courtinfo.ca.gov](http://www.courtinfo.ca.gov)

AHCA8978

American LegalNet, Inc.  
[www.FormsWorkflow.com](http://www.FormsWorkflow.com)

SUM-130

PLAINTIFF (Name): U.S. Bank	CASE NUMBER:
DEFENDANT (Name): TEODORICO CAYANAN, JANETH CAYANAN; et al.	

6. Unlawful detainer assistant (complete if plaintiff has received any help or advice for pay from an unlawful detainer assistant):
- a. Assistant's name:
  - b. Telephone no.:
  - c. Street address, city, and zip:
  - d. County of registration:
  - e. Registration no.:
  - f. Registration expires on (date):

Items 1-6 below must be completed (see instructions on page 2)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. ☐ Large number of separately represented parties

b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve

c. ☐ Substantial amount of documentary evidence

d. ☐ Large number of witnesses

e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court

f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): One (1)

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY) FOR PARTY

## Page 1 of 2

Cal. Rules of Court, rules 2.30, 2.220, 3.400-3.403, 3.740,  
Cal. Standards of Judicial Administration, vol. 3.10  
www.courtinfo.ca.gov



CM-010

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in items 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2/30 and 3.220 of the California Rules of Court.

**To Parties in a Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising for a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

## Auto Tort

Auto (22)-Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

## Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (not asbestos or toxic/environmental) (24)  
Medical Malpractice (45)  
Medical Malpractice-Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

## Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (not medical or legal)  
Other Non-PI/PD/WD Tort (35)

## Employment

Wrongful Termination (36)  
Other Employment (15)

## Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract (not unlawful detainer or wrongful eviction)  
Contract/Warranty Breach-Seller  
Plaintiff (not fraud or negligence)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case-Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (not provisionally complex) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

## Real Property

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

## Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

## Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ-Administrative Mandamus  
Writ-Mandamus on Limited Court Case Matter  
Writ-Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal-Labor  
Commissioner Appeals

## Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

## Enforcement of Judgment

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (non-domestic relations)  
Sister State Judgment  
Administrative Agency Award (not unpaid taxes)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

## Miscellaneous Civil Complaint

RICO (27)  
Other Complaint (not specified above) (42)  
Declaratory Relief Only  
Injunctive Relief Only (non-harassment)  
Mechanics Lien  
Other Commercial Complaint Case (non-tort/non-complex)  
Other Civil Complaint (non-tort/non-complex)

## Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition (not specified above) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition

**NOTICE: EVERYONE WHO LIVES IN THIS RENTAL UNIT MAY BE EVICTED BY COURT ORDER. READ THIS FORM IF YOU LIVE HERE AND IF YOUR NAME IS NOT ON THE ATTACHED SUMMONS AND COMPLAINT.**

1. If you live here and you do not complete and submit this form within 10 days of the date of service shown on this form, you will be evicted without further hearing by the court along with the persons named in the Summons and Complaint.
2. If you file this form, your claim will be determined in the eviction action against the persons named in the Complaint.
3. If you do not file this form, you will be evicted without further hearing.

CLAIMANT OR CLAIMANT'S ATTORNEY (Name and Address):		TELEPHONE NO.:	FOR COURT USE ONLY
ATTORNEY FOR (Name):			
NAME OF COURT: Santa Clara County Superior Court-Downtown			
STREET ADDRESS:			
MAILING ADDRESS: 191 No. First Street			
CITY AND ZIP CODE: San Jose, CA 95113			
BRANCH NAME: Downtown			
PLAINTIFF: U.S. BANK, NATIONAL ASSOCIATION, as Trustee			
DEFENDANT: TEODORICO CAYANAN, JANETH CAYANAN; et al.			
PREJUDGMENT CLAIM OF RIGHT TO POSSESSION		CASE NUMBER:	110CV185244
Complete this form only if ALL of these statements are true: 1. You are NOT named in the accompanying Summons and Complaint. 2. You occupied the premises on or before the date the unlawful detainer (eviction) Complaint was filed. 3. You still occupy the premises.		(To be completed by the process server) DATE OF SERVICE: (Date that this form is served or delivered, and posted, and mailed by the officer of process server)	

I DECLARE THE FOLLOWING UNDER PENALTY OF PERJURY:

1. My name is (specify):
2. I reside at (street address, unit No., city and ZIP code):
3. The address of "the premises" subject to this claim is (address):
4. On (insert date): , the landlord or the landlord's authorized agent filed a complaint to recover possession of the premises. (This date is the court filing date on the accompanying Summons and Complaint.
5. I occupied the premises on the date the complaint was filed (the date in item 4). I have continued to occupy the premises ever since.
6. I was at least 18 years of age on the date the complaint was filed (the date in item 4).
7. I claim a right to possession of the premises because I occupied the premises on the date the complaint was filed (the date in item 4).
8. I was not named in the Summons and Complaint.
9. I understand that if I make the claim of right to possession, I will be added as a defendant to the unlawful detainer (eviction) action.
10. (Filing fee) I understand that I must go to the court and pay a filing fee of \$  or file with the court the form "Application for Waiver of Court Fees and Costs." I understand that if I don't pay the filing fee or file with the court the form for waiver of court fees within 10 days from the date of service on this form (excluding court holidays), I will not be entitled to make a claim of right to possession.

(Continued on reverse)

PLAINTIFF (Name): U.S. Bank	CASE NUMBER:
DEFENDANT (Name): TEODORICO CAYANAN, JANETH CAYANAN; et al.	

**NOTICE: If you fail to file this claim, you will be evicted without further hearing.**

11. (Response required within five days after you file this form) I understand that I will have five days (excluding court holidays) to file a response to the Summons and Complaint after I file this Prejudgment Claim of Right to Possession form.

12. Rental agreement. I have (check all that apply to you):

- a. ☐ an oral rental agreement with the landlord.
- b. ☐ a written rental agreement with the landlord.
- c. ☐ an oral rental agreement with a person other than the landlord.
- d. ☐ a written rental agreement with a person other than the landlord.
- e. ☐ other (explain):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

**WARNING: Perjury is a felony punishable by imprisonment in the state prison.**

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF CLAIMANT)

**NOTICE: If you file this claim of right to possession, the unlawful detainer (eviction) action against you will be determined at trial. At trial, you may be found liable for rent, costs, and, in some cases, treble damages.**

### — NOTICE TO OCCUPANTS —

**YOU MUST ACT AT ONCE** if all the following are true:

1. You are NOT named in the accompanying Summons and Complaint.
2. You occupied the premises on or before the date the unlawful detainer (eviction) complaint was filed. (The date is the court filing date on the accompanying Summons and Complaint.)
3. You still occupy the premises.

(Where to file this form) You can complete and SUBMIT THIS CLAIM FORM WITHIN 10 DAYS from the date of service (on the reverse of this form) at the court where the unlawful detainer (eviction) complaint was filed.

(What will happen if you do not file this form) If you do not complete and submit this form and pay a filing fee or file the form for proceeding in forma pauperis if you cannot pay the fee, YOU WILL BE EVICTED.

After this form is properly filed, you will be added as a defendant in the unlawful detainer (eviction) action and your right to Occupy the premises will be decided by the court. If you do not file this claim, you will be evicted without a hearing.

1 JOHN C. SAGINAW  
 2 Attorney Bar No. 67385  
 3 AMY E. STARRETT  
 4 Attorney Bar No. 256204  
 5 Robert J. Jackson & Associates, Inc.  
 6 4199 Campus Drive, Suite 700  
 7 Irvine, California 92612  
 8 (949) 854-2244  
 9 Attorney for Plaintiff

FILED  
 200 OCT 19 A 9 47  
 D. Mendel

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 11 SANTA CLARA COUNTY - DOWNTOWN JUDICIAL DISTRICT

12 U.S. BANK, NATIONAL ASSOCIATION, as  
 13 Trustee

14 Plaintiff,

15 vs.

16 TEODORICO CAYANAN, JANETH  
 17 CAYANAN;  
 18 and DOES 1 through 100, inclusive

19 Defendant.

CASE NO.: 110CV185244  
 COMPLAINT IN UNLAWFUL DETAINER  
 LIMITED CIVIL JURISDICTION  
 POST-FORECLOSURE EVICTION  
 AMOUNT DEMANDED DOES NOT  
 EXCEED \$10,000  
 Property Address:  
 1388 TRESTLEWOOD DRIVE  
 SAN JOSE, CA 95138

20 Plaintiff U.S. BANK, NATIONAL ASSOCIATION, as Trustee ("U.S. Bank") alleges as follows:

- 21 1. U.S. Bank is now and at all times relevant was an entity qualified to commence this action.
- 22 2. The names and capacities of the Defendants sued herein as DOES 1 through 100, inclusive, are
- 23 unknown to Plaintiff at this time. These defendants will be served pursuant to *Code of Civ. Proc.*
- 24 § 415.46.
- 25 3. The property of which Plaintiff seeks possession is located at 1388 TRESTLEWOOD DRIVE,
- 26

27 THIS MAY BE AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION  
 28 OBTAINED MAY BE USED FOR THAT PURPOSE. HOWEVER, IF YOU ARE IN  
 BANKRUPTCY OR RECEIVED A BANKRUPTCY DISCHARGE, NO ATTEMPT IS BEING  
 MADE TO COLLECT A DEBT AND ANY INFORMATION WILL BE OBTAINED FOR  
 INFORMATIONAL PURPOSES ONLY.

1 SAN JOSE, CA 95138 (the "Premises"). Said Premises is located within this Superior Court  
2 Judicial District.

3 4. Possession of the Premises is sought pursuant to *Code of Civ. Proc.* § 1161a. Plaintiff obtained  
4 title to the Premises and right to possession thereof by its purchase at a foreclosure sale validly  
5 held in compliance with *Civil Code* § 2924, the particulars of which are as follows:

6 A. TEODORICO CAYANAN, JANETH CAYANAN executed as Trustor(s) a Deed of Trust,  
7 with power of sale, recorded on or about 09/12/2005 in the Official Records of Santa Clara  
8 County as Instrument Number 18571403, which Deed of Trust encumbered the Premises.

9 B. Pursuant to the foreclosure and sale of the Premises, under the power of sale contained in  
10 the Deed of Trust and in compliance with *Civil Code* § 2924, the Trustee of said Deed of  
11 Trust sold and conveyed title to the Premises to U.S. Bank, pursuant to a Trustee's Deed  
12 Upon Sale recorded on or about 09/23/2010 in the Official Records of Santa Clara County  
13 as Instrument Number 20886242, a copy of which is attached hereto as Exhibit 'A' and  
14 incorporated herein by reference.

15 5. Title is and has been perfected in U.S. Bank on or around 09/23/2010.

16 6. Plaintiff is informed, believes, and thereon alleges that Defendants TEODORICO CAYANAN,  
17 JANETH CAYANAN and DOES 1 through 50 were in possession of the Premises at the time of  
18 sale, and that said Defendants and DOES 51 through 100 remained in possession after the sale.

19 7. Plaintiff is informed, believes, and based upon such information and belief, alleges that none of the  
20 Defendants herein is entitled to any protection under the terms of the Protecting Tenants at  
21 Foreclosure Act of 2009 ("PTFA"). To the extent such rights may exist, Plaintiff is informed,  
22 believes, and based upon such information and belief, alleges that it has complied with the terms of  
23 PTFA, and is entitled to possession of the subject Premises. Plaintiff is further informed, believes,  
24 and based on such information and belief, alleges that none of the Defendants herein constitutes a  
25 legitimate tenant under California law.

26  
27 THIS MAY BE AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION  
28 OBTAINED MAY BE USED FOR THAT PURPOSE. HOWEVER, IF YOU ARE IN  
BANKRUPTCY OR RECEIVED A BANKRUPTCY DISCHARGE, NO ATTEMPT IS BEING  
MADE TO COLLECT A DEBT AND ANY INFORMATION WILL BE OBTAINED FOR  
INFORMATIONAL PURPOSES ONLY.

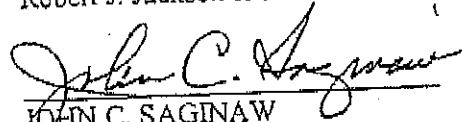
- 1 8. On or about 10/07/2010, Plaintiff caused to be served on Defendants TEODORICO CAYANAN,  
2 JANETH CAYANAN and DOES 1 through 100 a written Notice to Vacate Property pursuant to  
3 *Code of Civ. Proc.* § 1162, a copy of which Notice is attached hereto as Exhibit 'B' and  
4 incorporated herein by reference.
- 5 9. The Notice expired at midnight on 10/11/2010, and since 10/12/2010 Plaintiff is and has been  
6 entitled to immediate possession of the Premises.
- 7 10. Defendants and each of them failed and refused to surrender possession within or since the notice  
8 period, and continue in possession of the Premises without Plaintiff's consent. Unnamed  
9 Defendants shall be served pursuant to *Code of Civ. Proc.* § 415.46.

10  
11 WHEREFORE, Plaintiff requests judgment as follows:

- 12 1. For possession of the Premises;  
13 2. For costs of suit; and  
14 3. For such other and further relief as the Court deems appropriate.

15  
16 Date: October 15, 2010

Robert J. Jackson & Associates, Inc.

17   
18 JOHN C. SAGINAW  
19 Attorney for Plaintiff  
20  
21  
22  
23  
24  
25  
26

27 THIS MAY BE AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION  
28 OBTAINED MAY BE USED FOR THAT PURPOSE. HOWEVER, IF YOU ARE IN  
BANKRUPTCY OR RECEIVED A BANKRUPTCY DISCHARGE, NO ATTEMPT IS BEING  
MADE TO COLLECT A DEBT AND ANY INFORMATION WILL BE OBTAINED FOR  
INFORMATIONAL PURPOSES ONLY.

EXHIBIT "A"



## RECORDING REQUESTED BY

And when recorded mail to  
 AMERICAN HOME MORTGAGE SERVICE  
 RE: Loan # 0018588459/CAYANAN  
 4875 BELFORT ROAD  
 JACKSONVILLE, FL 32256

THIS IS TO CERTIFY THAT THIS IS A FULL,  
 TRUE AND CORRECT COPY OF THE ORIGINAL  
 RECORDED IN THE OFFICE OF THE COUNTY

RECORDING FEE: \$18.00

RECORDED ON: September 23, 2010

AS DOCUMENT NO: 20886242

BY: s/ DPS Automation

LSI TITLE COMPANY (CA)

090283080

Space above this line for recorder's use

## TRUSTEE'S DEED UPON SALE




THE GRANTEE IS THE FORECLOSING BENEFICIARY AND THIS IS A  
 FIRST DEED OF TRUST

The undersigned declares under penalty of perjury that the following declaration is true and correct:

- |   |                |
|---|----------------|
| 1) The Grantee herein was the foreclosing Beneficiary.      | \$1,307,135.25 |
| 2) The amount of the unpaid debt together with costs was    | \$663,000.00   |
| 3) The amount paid by the Grantee at the Trustee's Sale was | \$0.00         |
| 4) The documentary transfer tax is                          | \$0.00         |
| 5) The city transfer tax is                                 | \$0.00         |
| 6) The monument preservation tax is                         | \$0.00         |
| 7) Said property is in San Jose, County of Santa Clara      |                |

T.D. SERVICE COMPANY

By:   
 Cheryl L. Groch, Trustee's Sale Officer

Dated: 09/21/10

T.S. No: K386643 CA Unit Code: K Loan No: 0018588459/CAYANAN Investor No: 671005072  
 AP #1: 679-38-043  
 Property Address: 1388 TRESTLEWOOD DR, SAN JOSE, CA 95138

POWER DEFAULT SERVICES, INC., F/K/A AHMSI DEFAULT SERVICES, INC.  
 (herein called Trustee)

does hereby GRANT AND CONVEY, without any covenant or warranty, express or implied to

U.S. BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR J.P. MORGAN MORTGAGE ACQUISITION  
 CORP. 2005-OPT2 ASSET BACKED PASS-THROUGH CERTIFICATES SERIES 2005-OPT2  
 (herein called Grantee), such interest as Trustee has in that certain property described as follows:

LOT 90, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "TRACT NO. 9164, THE RANCH ON  
 SILVER CREEK-DI, "WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY  
 OF SANTA CLARA, STATE OF CALIFORNIA ON DECEMBER 17, 2002 IN BOOK 756 OF MAPS, PAGES  
 13 THROUGH 29, INCLUSIVE.

This conveyance is made pursuant to the authority vested in said Trustee, as Trustee or as duly appointed Trustee  
 by the Deed of Trust described as follows:

MAIL TAX STATEMENTS TO ADDRESS SHOWN ABOVE



Page 2

T.S. No: K386643 CA Unit Code: K Loan No: 0018588459/CAYANAN Investor No: 671006072

Trustor: TEODORICO CAYANAN, JANETH CAYANAN

Recorded September 12, 2005 as Instr. No. 18571403 in Book --- Page --- of Official Records in the office of the Recorder of SANTA CLARA County; CALIFORNIA, Whereas, the holder of the note secured by said Deed of Trust delivered to Trustee a written Declaration of Default and, pursuant thereto, a Notice of Default was recorded April 21, 2009 as Instr. No. 20218819 in Book --- Page --- of Official Records in the office of the Recorder of SANTA CLARA County; CALIFORNIA.

Whereas, Trustee complied with all applicable statutory provisions of California Civil Code Sections 2924 et seq. and of the described Deed of Trust including the mailing, publication, personal delivery, and posting of the Notice of Default and Notice of Sale, as respectively appropriate.

Said Notice of Trustee's Sale stated the time and place that Trustee would sell its interest in the described property at public auction. On September 21, 2010, the date set forth in the Notice of Trustee's Sale or the properly postponed sale date, Trustee sold the described property to Grantee, the highest qualified bidder present, for the sum of \$663,000.00 Pre-taxita.

In Witness Whereof, the undersigned caused its corporate name and seal (if applicable) to be hereunto affixed.

Dated September 21, 2010

POWER DEFAULT SERVICES, INC. F/K/A AHMSI DEFAULT SERVICES, INC.  
By T.D. Service Company, As Agent for the Trustee  
BY Cheryl L. Grech Assistant Secretary

BY Kimberly Thorne  
Kimberly Thorne, Assistant Secretary

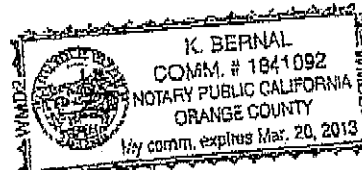
STATE OF CALIFORNIA  
COUNTY OF ORANGE.

)SS

On 09/21/10 before me, K. BERNAL, a Notary Public, personally appeared CHERYL L. GRECH and KIMBERLY THORNE, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the Laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature K. Bernal (Seal)

This instrument is being recorded as an  
ACCOMMODATION ONLY with no  
Representation as to its effect upon the

EXHIBIT "B"

## NOTICE TO VACATE PROPERTY

TO: TEODORICO CAYANAN, JANETH CAYANAN &  
All occupants residing at  
1388 TRESTLEWOOD DRIVE  
SAN JOSE, CA 95138

NOTICE IS HEREBY GIVEN THAT U.S. BANK, NATIONAL ASSOCIATION, AS TRUSTEE ("U.S. BANK"), or its predecessor in interest, purchased the property located at 1388 TRESTLEWOOD DRIVE, SAN JOSE, CA 95138 (the "Premises") at a foreclosure sale held in accordance with Civil Code § 2924 and pursuant to the power of sale contained in a Deed of Trust recorded on 9/12/2005 as Instrument Number 18571403 in the Official Records of SANTA CLARA County, and that title to the Premises is duly perfected in U.S. BANK.

### NOTICE IS FURTHER GIVEN THAT:

1. Within three (3) days after service on you of this Notice, if you are the Trustor(s) of the Deed of Trust described above, or a successor in interest to said Trustor(s), or any person who is not a bona fide tenant or subtenant; or,
2. Within ninety (90) days after service on you of this Notice, in the event you are a bona fide tenant or a subtenant of the Trustor(s) of the Deed of Trust described above, or a bona fide tenant or a subtenant of a successor in interest to said Trustor(s):

You are required to vacate and surrender possession of the Premises, or the portion in which you reside, to U.S. BANK through KAMRAN CHITGAR, its agent, who can be reached at (408)694-1400 from 9:00 a.m. to 5:00 p.m. on all business days, unless you provide evidence to the undersigned law firm that you are a bona fide tenant pursuant to Section 702(a)(2)(A) of the federal "Protecting Tenants at Foreclosure Act of 2009" ("PTFA") or are protected by Section 703 of the PTFA. Please see Page 2 Addendum of this Notice for instructions on how to deliver this evidence.

If within the applicable period as set forth above, EITHER if you fail to surrender possession OR if you fail to provide evidence that you are a bona fide tenant pursuant to Section 702(a)(2)(A) of the PTFA or are protected by Section 703 of the PTFA, U.S. BANK will commence eviction proceedings against you to recover possession of the Premises and for damages caused by your unlawful detention of the Premises.

PARA ASISTENCIA EN ESPANOL LLAME AL 949.854.2244, EXT. 261.

(NOTICE HAS A SECOND PAGE)


UNLESS CONTACT IS MADE AND ACCEPTABLE EVIDENCE TO SHOW A LEGITIMATE TENANCY IS PRODUCED WITHIN THREE (3) DAYS OF THE SERVICE OF THIS NOTICE, THE EVICTION ACTION WILL BE COMMENCED AGAINST THE ABOVE NAMED FORMER OWNER(S) BASED ON THE THREE (3) DAY PORTION OF THIS NOTICE.

This Notice is given pursuant to the provisions of the PTFA and Code of Civil Procedure §§ 1161, 1161a and 1161b, and if applicable, includes the 60 day Notice required by CCP 1161b within the above 90 day Notice period.

This notice also constitutes a notice of non-renewal of any lease applicable to the Premises.

Dated: October 6, 2010

Robert J. Jackson & Associates, Inc.

  
DAVID J. BOYER  
Attorney for U.S. BANK  
ARCA8978

#### TENANT INFORMATION

IF YOU ARE A TENANT of the prior owner, you must provide the following documents:

- A copy of your lease
- A return phone number and hours to reach you
- The receipt for the last six (6) payments made to the landlord for the residence

by mail, fax, or in person to:

Robert J. Jackson & Associates, Inc.  
Tenant Occupied Properties Department  
4199 Campus Drive, Suite 700  
Irvine, CA 92612

Fax: 949.892.1336

For any questions, please call 949.854.2244, Ext. 208

PARA ASISTENCIA EN ESPANOL LLAME AL 949.854.2244, EXT. 261.

**DISCLAIMER:**

This Notice is an attempt to collect a debt and any information obtained from you will be used for that purpose. If you notify Robert J. Jackson and Associates, Inc. ("RJJ") at 4199 Campus Drive, Suite 700, Irvine, CA 92612, in writing, within thirty days, that you wish to be provided the name and address of the original creditor if different from the current creditor or that the debt is disputed, RJJ will obtain the requested information and a copy will be mailed to you. Unless you make these requests within thirty days of the date of this Notice the debt will be deemed valid.

**CAUTION:** Your thirty day rights set forth in this disclaimer do not extend your right to pay or vacate set forth in the Notice, AND, the Notice to pay or vacate does not shorten or otherwise affect your thirty day rights set out in this disclaimer.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address)		TELEPHONE NO.	FOR COURT USE ONLY
Robert J. Jackson & Associates, Inc. 4189 Campus Dr Ste 700		(949) 854-2244	
Irvine	CA	92612	
ATTORNEY FOR (Name)			
Major or Court stamp of Judicial District and Branch Court if any			
SHORT TITLE OF CASE			
2018341	(HEARING) Date	Time	Case Number
		Dept	REFERENCE NO. AHCAB878

## PROOF OF SERVICE

AT THE TIME OF SERVICE I WAS AT LEAST 18 YEARS OF AGE AND NOT A PARTY TO THIS ACTION, AND I SERVED THE:

3/50 DAY NOTICE TO VACATE PROPERTY

BY SERVING SAID NOTICE AS AUTHORIZED BY C.C.P. 1162(2,3)  
TO THE TENANT: TEODORICO CAYANAN

ON: 10/7/2010 TIME OF DELIVERY: 5:02:00 PM

BY POSTING A COPY OF SAID NOTICE IN A CONSPICUOUS PLACE ON THE PROPERTY THEREIN DESCRIBED, THERE BEING NO PERSON OF SUITABLE AGE OR DISCRETION TO BE FOUND AT ANY KNOWN PLACE OF RESIDENCE OR BUSINESS OF SAID TENANT; AND MAILING A COPY TO SAID TENANT BY DEPOSITING SAID COPIES IN THE UNITED STATES MAIL IN A SEALED ENVELOPE WITH POSTAGE FULLY PREPAID, ADDRESSED TO THE TENANT AT:

ADDRESS: 1388 Trestlewood Drive  
San Jose CA 95138

ON 10/7/2010

7a. Person Serving: Victor W. Rzepka

d. The fee for service was \$107.00

e. I am:

(1) not a registered California process server:

(3) X registered California process server:

(i) Independent Contractor

(ii) Registration No: 1175

(i) County: SANTA CLARA

b. DDS Legal Support  
2900 Bristol St  
Costa Mesa, Ca 92626

c. (714) 662-5555

8. I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Victor W. Rzepka

10/13/2010

X

SIGNATURE

Form Approved for Optional Use Judicial  
Council of California  
POS-010 (REV Jan 1 2007)

PROOF OF SERVICE

CRC 982(A)(23)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address) Robert J. Jackson & Associates, Inc. 4199 Campus Dr Ste 700 Irvine CA 92612		TELEPHONE NO (949) 854-2244	FOR COURT USE ONLY
ATTORNEY FOR (Name)			
Name of Court Name of Judicial District and Branch Court if any			
SHORT TITLE OF CASE			
2021280	(HEARING) Date	Time	Dept
			Case Number
			REFERENCES AHCA8978

## PROOF OF SERVICE

AT THE TIME OF SERVICE I WAS AT LEAST 18 YEARS OF AGE AND NOT A PARTY TO THIS ACTION, AND I SERVED THE:

3/90 DAY NOTICE TO VACATE PROPERTY

BY SERVING SAID NOTICE AS AUTHORIZED BY C.C.P. 1162(2,3)  
TO THE TENANT: JANETH CAYANAN

ON: 10/7/2010 TIME OF DELIVERY: 5:02:00 PM

BY POSTING A COPY OF SAID NOTICE IN A CONSPICUOUS PLACE ON THE PROPERTY THEREIN DESCRIBED, THERE BEING NO PERSON OF SUITABLE AGE OR DISCRETION TO BE FOUND AT ANY KNOWN PLACE OF RESIDENCE OR BUSINESS OF SAID TENANT; AND MAILING A COPY TO SAID TENANT BY DEPOSITING SAID COPIES IN THE UNITED STATES MAIL IN A SEALED ENVELOPE WITH POSTAGE FULLY PREPAID, ADDRESSED TO THE TENANT AT:

ADDRESS: 1388 Trestlewood Drive  
San Jose CA 95138 ON 10/7/2010

7a. Person Serving: Victor W. Rzepka

d. The fee for service was \$0.00

e. I am:

b. DDS Legal Support  
2900 Bristol St  
Costa Mesa, Ca 92626

(1) not a registered California process server.  
(3) X registered California process server.

(f) Independent Contractor

(g) Registration No: 1175

(h) County: SANTA CLARA

c. (714) 662-5556

8. I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Victor W. Rzepka

10/13/2010

X

SIGNATURE

Form Approved for Optional Use Judicial  
Council of California  
POS-010 (REV Jan 1 2007)

PROOF OF SERVICE

CRC 9B2(A)(23)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address)		TELEPHONE NO.	FOR COURT USE ONLY
Robert J. Jackson & Associates, Inc. 4199 Campus Dr Ste 700		(949) 864-2244	
Irvine	CA	92612	
ATTORNEY FOR (Name)			
Instit of Court Name of Judicial District and Branch Court if any			
SHORT TITLE OF CASE			
2021281	(HEARING) Date	Time	Depl
			Case Number
			REFERENCE NO. AHCA8878

## PROOF OF SERVICE

AT THE TIME OF SERVICE I WAS AT LEAST 18 YEARS OF AGE AND NOT A PARTY TO THIS ACTION, AND I SERVED THE:

3/90 DAY NOTICE TO VACATE PROPERTY

BY SERVING SAID NOTICE AS AUTHORIZED BY C.C.P. 1182(2,3)  
TO THE TENANT: ALL OCCUPANTS

ON: 10/7/2010 TIME OF DELIVERY: 5:02:00 PM

BY POSTING A COPY OF SAID NOTICE IN A CONSPICUOUS PLACE ON THE PROPERTY THEREIN DESCRIBED, THERE BEING NO PERSON OF SUITABLE AGE OR DISCRETION TO BE FOUND AT ANY KNOWN PLACE OF RESIDENCE OR BUSINESS OF SAID TENANT; AND MAILING A COPY TO SAID TENANT BY DEPOSITING SAID COPIES IN THE UNITED STATES MAIL IN A SEALED ENVELOPE WITH POSTAGE FULLY PREPAID, ADDRESSED TO THE TENANT AT:

ADDRESS: 1388 Trestlewood Drive  
San Jose CA 95138

ON 10/7/2010

7a. Person Serving: Victor W. Rzepka

d. The fee for service was \$0.00

a. I am:

b. DDS Legal Support  
2900 Bristol St  
Costa Mesa, Ca 92626

(1) not a registered California process server.  
(3) X registered California process server

(i) Independent Contractor

(j) Registration No: 1175

(l) County: SANTA CLARA

c. (714) 662-5555

8. I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Victor W. Rzepka

10/13/2010

X  SIGNATURE

Form Approved for Optional Use Judicial  
Council of California  
POS-010 (REV Jan 1 2007)

PROOF OF SERVICE

CRC 082(A)(23)




VERIFICATION

1, JOHN C. SAGINAW, declare:

1. I am an attorney duly licensed to practice before this court.
  2. My office is located in Orange County, CA, and Plaintiff has no officers in said county who have any personal knowledge of this matter.
  3. I have read the foregoing Complaint and know the contents thereof. I am informed and believe the matters therein to be true and on that ground allege that the matters stated therein are true.
- I declare under penalty of perjury under the laws of the State of California that all of the foregoing is true and correct.

Executed this 15 day of OCTOBER, 2010 at Irvine, California.

  
JOHN C. SAGINAW

THIS MAY BE AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED MAY BE USED FOR THAT PURPOSE. HOWEVER, IF YOU ARE IN BANKRUPTCY OR RECEIVED A BANKRUPTCY DISCHARGE, NO ATTEMPT IS BEING MADE TO COLLECT A DEBT AND ANY INFORMATION WILL BE OBTAINED FOR INFORMATIONAL PURPOSES ONLY.

JANETH & TEODORICO CAYANAN  
1388 Trestlewood Drive  
San Jose, CA 95138

Defendants, pro se

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA  
Downtown Judicial District

UCS

FILED Santa Clara Co  
11/16/10 2:58pm  
David H. Yamasaki  
Chief Executive Officer  
By: ssancayco DTSCIVD  
R#201000126104  
CK \$450.00  
TL \$450.00  
CASE No: 1-10-CV-185244: 1-10-CV-185244

U.S. BANK, NATIONAL ASSOCIATION, as  
Trustee

Plaintiff,

vs.

TEODORICO CAYANAN, JANETH  
CAYANAN; and DOES 1 to 100, inclusive  
Defendants.

TEODORICO CAYANAN AND  
JANETH CAYANAN'S DEMURRER  
TO COMPLAINT OF U.S. BANK,  
NATIONAL ASSOCIATION AS  
TRUSTEE FOR UNLAWFUL  
DETAINER & PREJUDGEMENT  
CLAIM TO RIGHT OF POSSESSION

U.S. BANK, NATIONAL ASSOCIATION  
Attorney to Notice:  
JOHN C. SAGINAW  
AMY E. STARRETT  
Jackson & Associates, Inc  
4199 Campus Drive, Suite 700  
Irvine, CA 92612  
(949) 854-2244

LIMITED CIVIL CASE

1-7-11  
9:15  
0-11

The Real Property address is: 1388 Trestlewood Drive, San Jose, CA 95138

Notice is given that defendants TEODORICO CAYANAN and JANETH CAYANAN appear specially to make this demurrer only and, so specially appearing, does and will, on JAN 7, 2011 (date), at 9:15 AM (time), or as soon thereafter as the matter may be heard, in \_\_\_\_\_ (Department or Division) 11 of this court, located at 191 N. First Street, San Jose CA, move for an order sustaining without leave to amend the Defendants' demurrer. That the court enter an order dismissing the action. That the Defendants be awarded costs associated with this action. That the court grant such other and further relief that the court considers proper.

1 with the new §SB 1137, §2923.5, §2923.6, §2924.8, §2929.3. SB 1137 became effective on  
2 September 8, 2008 and is in effect until January 1, 2013 for residential mortgages.

3 **The foreclosure was flawed.**

4 The demurrer will be based on any declaration(s) of Defendants and any supporting  
5 memorandum/exhibits served and filed with this demurrer, on the records and file in this action,  
6 and on such evidence as may be presented at the hearing on the demurrer. The defendants reserve  
7 the right to amend the demurrer.

8 **WHEREFORE, defendants request that:**

- 9 **1. Defendants' demurrer be sustained without leave to amend;**  
10 **2. The court enter an order dismissing the action;**  
11 **3. Defendants be awarded the costs of this action; and**  
12 **4. The court grant such other and further relief that the**  
13 **court considers proper.**

14 Dated: 11/16/10

15 BY:   
16

17 TEODORICO CAYANAN, pro se  
18 Defendant


19 BY:   
20

21 JANETH CAYANAN, pro se  
22 Defendant  
23  
24  
25  
26  
27  
28

DECLARATION

"I TEODORICO CAYANAN, declare under penalty of perjury under the laws of the State of California that this demurrer is filed in good faith and not for purposes of delay.

Dated: 11/16/10



TEODORICO CAYANAN, pro-se

1-10-CV-185244

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN MATEO

U.S. BANK NATIONAL ASSOCIATION, as Trustee vs. TEODORICO CAYANAN, JANETH CAYANAN, Et AL

Superior Court Case No.: 1-10-CV-185244

I am over the age of 18 and not a party to this action. My business address is P.O. Box 174, Palo Alto, CA 94302, which is located in the county where the mailing described took place.

On November 16, 2010, I served the foregoing document(s) described:  
DEMURRER TO UNLAWFUL DETAINER COMPLAINT AND PREJUDGEMENT CLAIM TO RIGHT OF POSSESSION.

Which were served upon:

U.S. BANK, NATIONAL ASSOCIATION

Attorney to Notice:

JOHN C. SAGINAW

AMY E. STARRETT

Jackson & Associates, Inc

4199 Campus Drive, Suite 700

Irvine, CA 92612

(949) 854-2244

XX I Deposited the foregoing documents in the United States Postal Service.  
Executed on: November 16, 2010.

(State) XXXX I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) \_\_\_\_\_ I declare that I am employed in the office of member of the bar of this Court at whose direction the service was made.

\_\_\_\_\_ BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee(s) above.

  
Letitia Sippio

# 7

1 JOHN C. SAGINAW  
Attorney Bar No. 67385  
2 AMY E. STARRETT  
Attorney Bar No. 256204  
3 Robert J. Jackson & Associates, Inc.  
4199 Campus Drive, Suite 700  
4 Irvine, California 92612-2698  
5 (949) 854-2244

6 Attorney for Plaintiff

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SANTA CLARA – DOWNTOWN JUDICIAL DISTRICT  
10

11 U.S. BANK, NATIONAL ASSOCIATION, as  
12 Trustee

13 Plaintiff,

14 vs.

15 TEODORICO CAYANAN, JANETH  
16 CAYANAN; et al.

17 Defendant.

Case No.: 1- 10- CV- 185244

**PLAINTIFF'S OPPOSITION TO  
DEFENDANTS' DEMURRER TO  
COMPLAINT IN UNLAWFUL  
DETAINER; MEMORANDUM OF  
POINTS AND AUTHORITIES**

Date: January 7, 2011

Time: 9:15 a.m.

Dept. 11

18 INTRODUCTION

19 Defendants TEODORICO CAYANAN and JANETH CAYANAN ("Defendants"), the former  
20 owner of the Property located at 1388 TRESTLEWOOD DRIVE, SAN JOSE, CA have filed a  
21 Demurrer to this post-foreclosure eviction on the grounds that Plaintiff U.S. BANK NATIONAL  
22 ASSOCIATION, as Trustee's ("Plaintiff") complaint fails to state a cause of action. Defendants'  
23 Demurrer is filed solely for delay and has no merit. Hence, the Demurrer must be overruled and the  
24 Defendants given five (5) days only to file an answer, based upon the following memorandum of  
25 points and authorities.  
26

27 ///

28 ///

MEMORANDUM OF POINTS AND AUTHORITIES

**1. A DEMURRER ASSUMES ALL THE FACTS PLEADED IN THE COMPLAINT ARE TRUE.**

A demurrer tests the legal sufficiency of a pleading and raises only issues of law—not of fact—regarding the form or content of the pleading under attack. CCP § 589; see *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal. App. 4<sup>th</sup> 968, 994. Thus, the demurrer admits the truth of all material facts properly pleaded. *Hubry v. Tri-city Hosp. Dist.* (1992) 2 Cal 4<sup>th</sup> 962, 966-967; *Serrano v. Priest* (1971) 5 Cal.3d 581, 590; *Adelman v. Associated Int'l Ins. Co.* (2001) 90 Cal. App. 4<sup>th</sup> 352, 359. A defendant cannot prevail on a demurrer on extrinsic evidence (such as affidavits or declarations) showing that the allegations are false or sham. Weil & Brown, CAL. PRAC. GUIDE: CIV. PRO. BEFORE TRIAL (The Rutter Group 2008) §7:1687.169.

**2. THE COMPLAINT PLEADS A VALID AND CLEAR CAUSE OF ACTION FOR POSSESSION PURSUANT TO CCP § 1161a(b)(3).**

The claims of failure to state and lack of certainty are likewise meritless. The factual elements for a prima facie case pursuant to CCP § 1161a(b)(3) are as follows:

- a. A procedurally valid foreclosure sale with title perfected in the plaintiff;
- b. Service of an appropriate Notice to Vacate Property; and,
- c. Continued occupancy of the property by a defendant after expiration of that notice.

The four corners of Plaintiff's Complaint clearly set forth through factual allegations all of the required elements for a post-foreclosure eviction action. Specifically, the Complaint alleges:

- a. The foreclosure sale was held in compliance with California law and title was perfected in Plaintiff on or around 09/23/2010. (Complaint, ¶¶ 4, 4B and ¶5)
- b. On or about 10/07/2010, the Notice to Vacate Property was served on Defendants "and DOES 1 through 10" pursuant to CCP § 1162; (Complaint ¶ 8)
- c. The Notice to Vacate Property expired on midnight 10/11/2010 and Defendants have failed to vacate the Property. (Complaint ¶¶ 9-10).

Thus, Plaintiff's Complaint sets forth all the allegations necessary to establish a prima facie



1 case for post-foreclosure unlawful detainer pursuant to CCP § 1161a(b)(3) in clear, concise, and  
2 certain terms. The claim to contrary is, as with the other claims, totally meritless.

3 CONCLUSION

4 Based on the above, Defendant's Demurrer is meritless and filed solely for purpose of delay.  
5 Plaintiff respectfully requests the court to overrule Defendant's Demurrer and Defendants be given  
6 five (5) days from the hearing to file and serve an answer, and only an answer, to Plaintiff's  
7 Complaint pursuant to CCP §§ 1167 and 1167.3.

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9  
10 Date: December 23, 2010

Robert J. Jackson & Associates, Inc.

By: 

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12  
13 AMY E. STARRETT  
14 Attorney for Plaintiff  
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**PROOF OF SERVICE****STATE OF CALIFORNIA, COUNTY OF ORANGE**

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action, my business address is 4199 Campus Drive, Suite 700, Irvine, CA 92612.

On December 23, 2010, I served the document described as **PLAINTIFF'S OPPOSITION TO DEFENDANTS' DEMURRER TO COMPLAINT IN UNLAWFUL DETAINER; MEMORANDUM OF POINTS AND AUTHORITIES**, on all parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

**XX** By placing the true copies hereof enclosed in the sealed envelopes. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice it is deposited with U.S. Postal service on that same day with the postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

— By Telefax. I forwarded such document by telefax to the offices of the addressee. \*\*

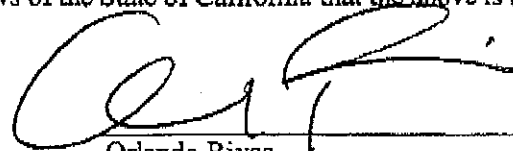
— By Personal Service. I delivered such envelope by hand to the offices of the addressee.

— By Overnight Courier. I caused the above-reference document(s) to be delivered to an authorized overnight courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person(s) on the attached service list.

— By Express Mail pursuant to CCP § 1013 (c) .

Executed on December 23, 2010, at Irvine, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Orlando Rivas  
DECLARANT

1 SERVICE LIST

2 TEODORICO CAYANAN

3 1388 TRESTLEWOOD DRIVE

4 SAN JOSE, CA 95138

6 JANETH CAYANAN

7 1388 TRESTLEWOOD DRIVE

8 SAN JOSE, CA 95138

10 ALL UNKNOWN OCCUPANTS

11 1388 TRESTLEWOOD DRIVE

12 SAN JOSE, CA 95138